# International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

ROBERT HEENAN
Business Manager

CHARLES PRISCOPO, Ass't Bus. Mgr. JAMES REILLEY, President MIKE MAZZA, Vice President AFFILIATED WITH THE AND BUILDING



AMERICAN FEDERATION OF LABOR TRADES DEPARTMENT

THOMAS P. DANESE, Recording Secretary
JAMES T. JONES, Treasurer
R TED JANEKA, Financial Secretary

1375 VIRGINIA DRIVE - SUITE 100, FORT WASHINGTON, PA 19034 (215) 542-7500 FAX: (215) 542-7557

January 21st 2013

Gary Sinners Acting Executive Secretary National Labor Relations Board Room 11602 East 109914 1h Street, N.W. Washington, DC 20570-0001

> Re: Hanson Aggregates B.M.C., Inc. Cases 04-Ca-03330 et al and Board Order 353 NLRB 287 (2008)

.

Dear Acting Executive Secretary Sinners;

Please accept this response to Region 4 letter to your Office of January 16<sup>th</sup> 2013. First, I must apologies that I am not afforded a Staff of Attorneys to look into nooks and crannies like the Region has in an effort to support their disregard to the above Reference Cases and Board Order. I prefer to just use the Board Orders of 2008 as the Members wrote for my guide and references to this letter and my request for review of compliance. I will leave the submarine expedition to Region 4 as they continue the mishandling of this Case and their refusal to address other unfair labor practices this past year by this employer in fear of looking incompetent in front of General Counsel and the Board.

**FACT**: 'Skill Points' raised in my letter of December 2<sup>nd</sup> 2012 and objected by the Region on timeliness, are and is **TIMELY** and noted in **Exhibit A!** Hanson, at the inception of Certification had an ongoing Skill Point practice. During negotiations this practice was in place! It was not until the Employer declared the unlawful impasse that the Skill Points were dissolved. You will note in **Exhibit A** which is an email to the Compliance Officer of the Region that Skill points are pointed out as one component of the Board Order not met, and an easy fix to do! But what did Region 4 do with the Facts of this component not being adhered? NOTHING! And now they make a mock attempt to cover up the facts here

with their backdrop if explored, shows nothing has been done since December 2009 to make employees 'WHOLE'. Apparently, the Region pride is more important here than the Taxpayer who pays them, because these taxpayers of Hanson has suffered under the arrogance of the Region actions in this shabby attempt of Compliance!

**FACT**: The Region and the Court Order forced Hanson to pay Skill Points to those who did not receive the unlawful wage increases given to the unit in Hanson Last Best and Final UNLAWFUL ORDER!

**FACT**: Hanson worked out a synopsis of Skill points employees would have earned up to December 2009. Then paid employees back pay with INTEREST to **that point** that did not receive Pay increases or received less of an UNLAWFUL wage increase, which if they had received Skill Points the difference was then paid in 2010 by Hanson.

**FACT**: The Payouts were paid out with interest payments in 2010. NOT A DIME WAS PAID OR <u>ANY</u> PAY CORRECTED AFTER THAT PAY OUT! ALL EMPLOYEES HAVE NOW SUFFERED UNDER THIS ERROR BY REGION 4! Therefore, the Board Order and the Court Order has and is being <u>violated</u> on this point alone! And expressed in **Exhibit 'A'** nearly two months before the Region closed Compliance!

**FACT**: After the employer paid out back pay to those that did not receive Skill Points, the Region has an Affidavit signed by me in 2010 demanding that Skill Point be reinstated!

**FACT:** The Union has demanded that Skill Points be restored to the employer in letters since October 2008 and at the table to state of nausea!

**FACT**: Exhibit 1 and 2 by Region 4 of their letter, I refer you to the Order and Section 2 (b) *Refrain* from making any changes to the terms and conditions of employment of employees in the Union absent an overall impasse...... Simply, what does the Region and General Counsel not get HERE? What do these astute Attorney of Region 4 not understand in the following words in the Board Order of 04-CA-03330 (d) Make employees whole for any loss of earnings and other benefits suffered as a result of its unilateral changes, in the manner set forth in the remedy section of the judge's decision,.....

The Order does not say make whole up and to 2010 and then **STOP!!!!!** The Former Regional Director should be held accountable for her blunder here. And this asinine waste of the Region time trying to prolong her actions as justifiable in their recent letter to you is not only degrading to the Board and Court Order of specifics on mandatory requirements, but a financial harm to those that voted to be represent and followed the guidelines under the National Labor Relations Acts.

The Region uses the term in their letter 'almost' all unit employees fared better under the NCS than they would have if the Respondent had retained its prior system". Now, the Region equates their decision to the game of horseshoes or hand-grenades. In their letter it's clear that illicitly, the Region Now admits their error but tries to cover it up with a NASA mathematical scheme of numbers and equations. Thank God the Regional Director didn't work for NASA or Apollo 13 would have never return back to Earth.

Having Now, admitted that the Region back pay calculations has only been allocated to DECEMBER 2009 on 'almost' everyone, WHAT DON'T THEY UNDERSTAND HERE THAT THE UNIT HAS

NOT RECEIVED A PENNY FORWARD! Truly, there is no word **CEASE** TO MAKE WHOEL FROM JANUAURY 2010, although that is what Region 4 has done and now admits to it in their own letter. The Region further tries to make a pitiful attempt in saying the Union was not clear on the union request of recession and that the NCS should be noted as it could have remained for future Case handling. Please, if the Region now wants to School the Union, they should first do their due diligence in enforcing the Board Order as written and not their abbreviation attempt. The Union again wanted the employer to rescind everything they changed from the time they declared their unlawful impasse! Is the word everything to hard to grasp at Region 4? Hopefully that word resonated here and the Board.

It is further beyond appalling that Region 4 now cites issues like Skill points were never raised until my request of review of Compliance or Appeal of January 2012 to General Counsel. I have provided to the Region, General Counsel and this Office my email to Region 4 Compliance Officer (**Exhibit A**) many times. Why does the Region not admit to it or reference it? What is the Region hiding from? And what deals have been cut by the Region with this Company that the union is not aware?

As Skill Points are further mentioned many times in the Appeal to the Acting General Counsel Office, although, and truly, why should I have to mention it since I took the time to go to the Region after the former Regional Director demanded me to give specifics of what I wanted rescinded in a sworn affidavit? Is the Region main responsibility not to enforce the Board Order? Does the Region not have a check list of Compliance? I have stated to the fit of nausea the Employer only would thumb their nose when the Union asked what they have complied with and this is mentioned in **Exhibit A**. Maybe the act of 'thumbing a nose' isn't in any reference material before the Region to evaluate the meaning, although, recently, in Case **04-CA-091702** the Region has allowed the employer to side-step their *Anti-Harassment* **Policy**, by allowing the term 'suck my dick' to be acceptable language on the job when used against a union supporter. In the Employer defense to the Region, to elude from their own policy, this crudity is now just some sort of on the job language. I wonder if the women on the job feel the same way who works for Hanson. I wonder how that expression would resonate in Region 4 daily operation. This Case (04-CA-091702) is now before General Counsel of Appeals. The Region beats their chest in knowing that the Office of Appeals remands less than 2% of all Appeals by a Regional Director, and that is factual. Region 4 now being oblivious to 'New' Charges with this knowledge, which only shows the arrogance they have taken in this Case.

To conclude on the first part of the Region ploy to dismiss the Skill Points raised in my letter of December 2012. These Skill Points were raised before the Region closed compliance. The Region never responded back on this issue before they closed compliance. And shame now on Region 4 to exploit the Law, rather than to do their duty as they swore to enforce the Law as an Officer of the Court!

The Region further pleas to you Executive Secretary Case 04-CA-037988 and 04-CA-069822 were examined by the Division of Contempt. Let's get all the Facts correct here.

**Fact:** At no time was I given any reply by anyone at the Region as noted in the Regions letter that Contempt examined and look at this Case. Let's first examine the Facts of the Region position/event in these relations to Contempt.

In the Region letter ...on April 23, 2012 CLCB agreed with the Region's recommendation against institution of contempt proceedings submitted on February 29<sup>th</sup>, 2012.

1. If true, why did the Region not afford a copy of the letter from the CLCB in this regard to the Union? It's almost comical that the Region wants the Union and members to perform like Lawyers

- in past letters to this Office, then completely omits that this Case is being review by Contempt when the union questioned this Case to the Region in the specific time period as Noted.
- 2. Never, what the Region has stated was ever mention to me by the Board Agent who investigated this Case that Contempt was looking over this Case in the above mention time period!
- 3. The Board Agent made clear he was <u>recommending</u> it to go to Contempt in the time frame noted in the Region letter.
- 4. The Region says, they sent this Case to Contempt, but, with a Note that in their opinion it's not contemptible. This is beyond nonsensical and just a waste of time, if true.
- 5. When this Case finally went to Complaint, I asked the Board Agent why this was not going to Contempt and was told the Regional Director at the time was not going that path now.

**Fact:** If the Region is being truthful on CLCB matter, then why did it take additional months to formulate this Case to an Official Complaint after CLCB said it was not a Contempt Case? Surely, if what the Region has cited is true, a Complaint would have been issued within weeks, not months, especially if the Region was not being 'specious' in their duties!

**NOTE**: If CLCB did review this Case then congratulation to them! In only 35 work days from the time the Region sends it to CLCB they receive an answer back from one of the Division found in NLRB which takes months and sometimes years to formulate a decision. And who said miracles don't happen!

**Fact**: Exhibit 'A' further mentions these Cases in the October email to the Compliance Officer of the Region, before a Complaint was even issued. This incident and then alleged Act, should have cease compliance until the investigation was concluded. But the Region took a shotgun position and just closed compliance, after they had me withdraw the first Charge, although, knowing the Charge had merit!

To conclude: The Region has taken the same approach to get their message out like FOX News. Say it often and someone may believe it! The Region further does not want the Facts to get in the way of their convoluted story. Again, why have they concealed Board Agents Memos, direct input from the Agents that were involved in this matter, and the <u>root</u> of this Case which the Employer told the Region by their Counsel that they would <u>never rescind the NCS</u>! Simply, this employer has taken the same attitude to NLRB and Region 4 as they have done to townships they perform business in (**Exhibit B**). While small townships may not have the diligence and resources to combat a conglomerate like Hanson, the Federal Government should invoke their due diligence and hold this employer to the letter of the Law, and more so the Board and Court Order imposed. The Region reckless act involving this Case and other recent merit charges they have dismissed, only gives this bully of an employer more ammunition to crap on workers and communities they stake a claim.

Respectfully submitted,

Frank Bankard

**IUOE Local 542** 

CC: Region 4 and John Nadler

# Exhibit 'A'

#### **Hanson Not in Compliance**

Monday, October 24, 2011 5:02 PM From: "Frank B." <oe542@yahoo.com>

To: "Shane D. Thurman" <Shane.Thurman@nlrb.gov>

**Message contains attachments** 3 Files (707KB) | <u>Download All</u>



Hanson noted July 2011.pdf



Hanson notes 6-10-12-10.pdf



Hanson notes 11-09 to 4-09.pdf

Shane, I have attached a number of my notes of the past and the ones that you're looking for since July 2011. I highlighted the older ones to show the Union position on certain matters of restoring and rescinding conditions, although, these requests fell on deaf ears of the Employer and apparently the Region.

Your inquiry last week was to see if Hanson has complied with each of the Board Orders of 2008 and 2011 and if they haven't, place in writing what needs to be restored or rescinded. Quickly, the answer to the questions answer is No and NO.

Another question you have posed for compliance, is, how has bargaining been since July 2011? You can see through my notes that bargaining has actually become worst since January of this year. For example, and as earlier mentioned, I am not incline to place in writing of what Hanson should rescind or restore, my position has been that I am not aware of all the changes made since they declared an unlawful impasse in October of 2005. Again, I have simply asked Hanson and the Region that the union wants all conditions restored to conditions of October 2005.

You will see as recent as July when the Board Order was issued, that the Union found out that the Company changed COBRA payments without notifying the Union of these increases. How did we become aware of this? By an employee who was constantly injured on the job and then quit and was given the new rates who then informed me.

You further will find that Hanson established a new policy of workers being sent home and paying them whatever they feel without bargaining with the Union. I am sure that John Nadler will tell you Jeff Carrey offered to bargain over the phone in September when he walked out talks. But, Carrey made clear and sustained by this Region that he won't bargain outside his established realm of the Hampton Inn in Newtown Pa. This position can further be found in evidence as early as January of this year when Jeff Carrey would not discuss or bargain the James Quarles incident of injury and safety over the phone and made clear all bargaining would only take place at the Hampton Inn in Newtown Pa.

The Company has further refused to abide by the Board Orders of rescinding all promotions that the Board Order grants the Union to have rescinded. And the Company without ever notifying the Union hired an employee to an open position the Union notified the Company to demand to bargain and this is a promoted position for the record.

They further established their own rate of pay for that position only one month after the Board Order regarding this issue was signed. The Union, per notes attached has had an outstanding demand to bargain rates of pay and again the Company has ignored this demand and implemented rates as they see fit.

The latest bargaining tactic by Hanson is to leave the Union at the Bargaining Table for long lengths of time or just leave bargaining without notice.

This next question is no reflection on you, but I would like to know why Hanson has had the ability to comply with the Board Order on their established terms and not the Union request as found in the Board Order? For example, Hanson took over a year to comply with <a href="Skill-Points allocation">Skill-Points allocation</a>, but has not restored <a href="these points now closing in on two years">two years</a>. The un-bargained wage rates and promotions would have been the easiest thing to restore, but, they have not and the employer and the Region have now known the Union position for over a year on this matter.

I feel rather than listing individual items to be restored or rescinded, the employer having full knowledge of what they have change should simply compile a list of all items they have changed provide this list to the Region and the Union and then restore them or rescind them to conditions of October 2005.

Please accept this email along with last week email on the Union position that Hanson has not complied to the Unions demands as Order per each Board Order of 2008 and 2011.

Frank Bankard

## Exhibit 'B'

## **Bucks County Courier Times**

### Nockamixon strikes deal with quarry over annual fee

Posted: Wednesday, October 17, 2012 12:00 am | Updated: 10:40 am, Wed Oct 17, 2012.

### Nockamixon strikes deal with quarry over annual fee

#### By Amanda Cregan Staff Writer

After battling in court for several years, Nockamixon and quarry officials have reached a settlement.

At its meeting Tuesday night, the township's supervisors voted to grant an annual permit to the Hanson Aggregates quarry.

The quarry owns 103 acres along Route 611 in the Ottsville section of Nockamixon. Nockamixon requires the quarry to pay a \$9,300 annual fee to operate. Since 2009, Nockamixon and quarry officials have been involved in litigation. In 2009, 2010 and 2011, the quarry refused to pay the township's annual fee imposed on the quarry.

"You have a lot of land uses in this township and there's no other use that requires a permit," said attorney John VanLuvanee, who represents the quarry.

As part of the deal, quarry officials still declined to pay the fees owed from the past three years. Instead, Hanson Aggregates offered to pay the 2012 fee with the intent to pay future annual fees.

"In my view, we're going forward and not going backward," said VanLuvanee, calling it a compromise. Hanson Aggregates submitted an application to the township in July and after several meetings and an inspection by the township's planning commission and engineer, the commission has recommended that the board of supervisors grant the permit.

VanLuvanee also noted that the quarry has not expanded horizontally since 2003, and is in compliance with state permits and regulations.

While maintaining the right to pursue collection of the past years' unpaid fees in court, supervisors voted 4-1 to accept the 2012 payment and grant the permit. "I don't have an issue going forward as long we're leaving our options open," said Supervisor Shannon Doman. Without comment, Supervisor Al Santopietro voted against.

## **Bucks County Courier Times**

#### Power of the purse

Posted: Wednesday, November 21, 2012 6:00 am | Updated: 8:27 pm, Tue Nov 20, 2012.

Recently, this paper published an article regarding Nockamixon supervisors relieving Hanson Aggregates of its past tax obligation, which amounts to \$9,300 per year. They haven't paid these taxes for a number of years. As reported, all Nockamixon supervisors, except one, voted to move forward rather than try to collect taxes owed. The supervisors feel since Hanson has agreed to pay this year's fee, it would be better to move on than to continue this battle in court. This is quite contrary to your typical residents and business owners, who go to work each day and pay their fair share.

Hanson/Heidelberg is a giant conglomerate from the United Kingdom. It has vast wealth, which exceeds tens of billions of dollars. Like many large firms, Hanson is indifferent to what they owe small townships like Nockamixon. Over the past 20 years, Hanson has purchased numerous parcels of land in the United States, rich with material assets. They then drain the assets, take the profits and move on.

Furthermore, this company has been found committing unfair labor practices against their employees. Nationwide, they have been found in violation of the National Labor Relations Act numerous times. Just in this area alone, they had to pay over \$500,000 in back wages as compensation to employees for illegal acts committed against them.

Hanson is the epitome of large businesses today. These large companies know that neither their employees nor townships like Nockamixon have the resources to successfully battle them in court. Powerful companies like Hanson will spend millions if they wish to not comply with local mandates. Although they had to pay over \$500,000 in back wages, their management boasted about the millions they spent on litigation to delay this payment to the employees who waited for long periods of time before the compensation was paid. These litigation expenses are merely tax write-offs, which if not spent on attorneys, would have to be paid in taxes.

It is also ironic that this story came out just a few weeks before the presidential election. Powerful employers have been stripping employees of their rights for years. Now these hard line corporate tactics seem to be trickling into local governments as they are being dealt with harshly as well. Maybe this is the true meaning of what is meant by the trickledown effect we have all heard about over the past three decades. Surely it hasn't been in wages and benefits to the people who perform work each day.

Tough guys, whether in the schoolyard or in multinational corporations, are never satisfied. They feed off the desire to exert their muscle whether physically or with a pen. In recent weeks, some corporate heads of companies have even threatened their employees with loss of their jobs unless they vote as the company orders them to.

What kind of nation are we becoming when we allow those with power and wealth to infringe on our personal liberties? Is this what our forefathers fought and died for? And what kind of stewards are we on the legacy they have left us?

#### Frank Bankard

 $http://www.phillyburbs.com/news/local/courier\_times\_news/opinion/letters\_to\_editor/power-of-the-purse/article\_45b0c261-b4a0-5b64-b14e-57eb1918b520.html$